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2019 MAY 10 PM 4:11

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS  
STATE OF LOUISIANA

CIVIL  
DISTRICT COURT

NO.: 17-4985

DIVISION: J-15

CHOICE FOUNDATION

versus

LAW INDUSTRIES, LLC, ET AL.

FILED: \_\_\_\_\_

DEPUTY CLERK OF COURT

PETITION FOR DAMAGES

Plaintiffs, Choice Foundation ("Choice") and Orleans Parish School Board ("OPSB"), aver the following in support of their Petition for Damages.

OVERVIEW

1.

Choice operates Lafayette Academy Charter School ("Lafayette Academy") in New Orleans, Louisiana, which is currently controlled by OPSB. Up until the 2018-2019 school year, Lafayette Academy was located at 2727 S. Carrollton Ave., New Orleans, LA 70118 (the "Carrollton Campus"). The Federal Emergency Management Agency funded a master plan to repair or rebuild schools in Orleans Parish, which included repairs in two phases of construction at the Carrollton Campus in 2016 and 2017. At the time of construction, Lafayette Academy was controlled by the Louisiana Department of Education Recovery School District ("RSD"). RSD contracted with Jacobs Project Management Company/CSRS Consortium ("Jacobs/CSRS") for Jacobs to act as the program and construction manager for the construction projects at Lafayette Academy.

RSD contracted with Tuna Construction, LLC, and Tuna contracted with V.E. Keeler & Associates, LLC to remove asbestos-containing floor tiles from four classrooms on the third floor of the Carrollton Campus in March 2016 (the "Phase 1 Work"). The negligence of RSD, Jacobs, Tuna, and Keeler led to deficiencies as outlined by the Louisiana Department of Environmental Quality in a July 31, 2017 report. Notably, that report was not given to Choice until nearly a year after that date. Choice and OPSB were the subject of negative media attention. Many parents and students were upset that they were not notified of the report earlier, which Choice understands led to some students switching to other schools.

Jacobs's mismanagement continued during the second phase of construction at Lafayette Academy. During the 2017-2018 school year, RSD contracted with a different contractor, Law Industries, LLC, who subcontracted with Advanced Environmental Consulting, Inc. ("AEC"), to perform various additional improvements at the Carrollton Campus, which included asbestos removal and replacement of the concrete floor fill system on the first and second floors (the "Phase 2 Work.") Jacobs again served as the construction manager of the project on behalf of RSD pursuant to a contract. There were major issues with the phase 2 work that forced Lafayette Academy to relocate campus. Choice and OPSB have suffered damages as result of Defendants' actions.

### **PARTIES**

2.

Plaintiff, Choice, is a non-profit corporation organized in the State of Louisiana that is based in New Orleans, Louisiana. Choice operates Lafayette Academy and also operates Esperanza Charter School at 4407 S. Carrollton Ave., New Orleans, LA 70119.

3.

Plaintiff, OPSB, is a political subdivision of the State of Louisiana, capable of suing, and is the current owner of the Carrollton Campus.

4.

Defendant, Jacobs, is a partnership consisting of Jacobs Project Management, Inc., a Delaware corporation, and CSRS, Inc., a Louisiana Corporation, that served as the manager of the work performed at the Carrollton Campus. Jacobs' program and construction management services for the Lafayette Academy project were provided as a part of its overall contract with the RSD for the management of the \$1.8 billion New Orleans school building master plan funded by FEMA. Thus, pursuant to a contract with the RSD, Jacobs served as the RSD's representative on the Phase 1 and Phase 2 projects at Lafayette Academy

5.

Defendant, Tuna, is a Louisiana limited liability company doing business in New Orleans, Louisiana. Tuna is a general contractor that RSD contracted with to perform the Phase 1 Work, which was for various improvements, including, but not limited to, replacing windows, at the Carrollton Campus during the 2016-2017 school year.

6.

Defendant, V.E. Keeler & Associates, LLC is a Louisiana limited liability company doing business in New Orleans, Louisiana that was the asbestos removal contractor hired by Tuna to perform the Phase 2 Work of removing asbestos-containing floor tiles from four classrooms on the third floor of the Carrollton Campus in March 2016.

7.

Defendant, Law, is a Louisiana limited liability company doing business in New Orleans, Louisiana. Law was the general contractor that performed and/or hired subcontractor, AEC, to perform Phase 2 remodeling and asbestos removal work at the Carrollton Campus in May and June 2018 that Jacobs administered.

8.

Defendant, AEC, is a Louisiana corporation doing business in New Orleans, Louisiana, and was the subcontractor who performed the Phase 2 Work at the Carrollton Campus.

9.

Defendant, N-Y Associates, Inc. ("N-Y"), is a Louisiana corporation doing business in New Orleans, Louisiana and served as the architect for Phase 1 and Phase 2 Work performed at the Carrollton Campus.

10.

Defendant, Colony Insurance Company, is an insurance company authorized to do business in Louisiana and issued an insurance policy or policies to Law that provide coverage for Choice's and OPSB's damages.

11.

Defendant, Travelers Indemnity Company ("Travelers Indemnity"), is an insurance company authorized to do business in Louisiana and issued an insurance policy or policies to Tuna that provide coverage for Choice's and OPSB's damages.

12.

Defendant, Travelers Property Casualty Company of America ("Travelers Property"), is an insurance company authorized to do business in Louisiana and issued an insurance policy or policies to Tuna that provide coverage for Choice's and OPSB's damages.

13.

Defendant, “ABC Insurance Company” is a placeholder defendant for any other insurance companies who issued an insurance policy or policies to Law that provide coverage for Choice’s and OPSB’s damages.

14.

Defendant, “DEF Insurance Company” is a placeholder defendant for any insurance companies who issued an insurance policy or policies to AEC that provide coverage for Choice’s and OPSB’s damages.

15.

Defendant, “GHI Insurance Company” is a placeholder defendant for any insurance companies who issued an insurance policy or policies to N-Y that provide coverage for Choice’s and OPSB’s damages.

16.

Defendant, “JKL Insurance Company” is a placeholder defendant for any insurance companies who issued an insurance policy or policies to Jacobs that provide coverage for Choice’s and OPSB’s damages.

17.

Defendant, “MNO Insurance Company” is a placeholder defendant for any insurance companies who issued an insurance policy or policies to Tuna that provide coverage for Choice’s and OPSB’s damages.

18.

Defendant, “QRS Insurance Company” is a placeholder defendant for any insurance companies who issued an insurance policy or policies to Keeler that provide coverage for Choice’s and OPSB’s damages.

19.

Jacobs, Tuna, Keeler, Law, AEC, N-Y, Colony, Travelers Indemnity, Travelers Property, and the placeholder insurance companies may be collectively referred to as “Defendants” throughout the Petition.

## **VENUE AND JURISDICTION**

20.

Pursuant to Louisiana Code of Civil Procedure articles 42, 73, 74, 76, and/or 76.1, venue is proper in Orleans Parish because, among other things, the wrongful conduct occurred in Orleans Parish, and Choice's and OPSB's damages were sustained here.

21.

Jurisdiction is proper in this Court pursuant to Article V, §16 of the Louisiana Constitution, and jurisdiction is vested in this Court pursuant to Louisiana Code of Civil Procedure articles 2 and/or 6.

## **FACTS**

22.

Choice and OPSB assert that the faults, acts, opinions, and/or negligence of the Defendants with respect to the construction at the Carrollton Campus caused and/or contributed to the damages suffered by Choice and OPSB.

23.

Choice is a charter school management organization established in 2004 to provide high-quality public education to students in New Orleans. Choice currently serves approximately 1,800 students from pre-kindergarten through eighth grade, almost all of whom are economically disadvantaged. Choice has long been one of the leading charter management organizations in New Orleans and its schools have always maintained their commitment to providing all children with access to a high-quality, well-rounded education.

24.

Choice Foundation entered into a lease with RSD. RSD was responsible for providing a school campus to Choice Foundation to operate Lafayette Academy, and RSD selected the Carrollton Campus as the site for Lafayette Academy. Thereafter, the Carrollton Campus transitioned to OPSB, but pursuant to La. R.S. 17:10.7.1(D)(2)(a), RSD maintained control of the OPSB buildings and managed the entire renovation process.

25.

The Carrollton Campus, like many schools and buildings in New Orleans, contains asbestos, which is naturally occurring in the environment. Asbestos has a risk of being harmful,

however, if the proper precautions are not taken and there is exposure for prolonged periods of time. Here, the Defendants knew or should have known of proper precautions but failed to adhere to them.

26.

During the 2016-2017 school year, the RSD contracted with Tuna Construction, LLC to perform the Phase 1 Work for various improvements, including, but not limited to, replacing windows, at the Carrollton Campus. Jacobs, through a contract with the RSD, served as the construction manager on the project.

27.

During construction, Tuna and its subcontractors failed to submit necessary reports.

28.

Tuna contracted with V. Keeler to remove asbestos-containing floor tiles from four classrooms on the third floor of the Carrollton Campus. In March 2016, V. Keeler began that construction.

29.

During that construction, Choice received complaints from faculty regarding smells and sounds that disrupted teaching and caused concern for their health.

30.

Choice later learned that on March 22, 2017, Louisiana Department of Environmental Quality ("LDEQ") visited the Carrollton Campus and observed multiple violations, which were outlined in an LDEQ Asbestos Demolition/Renovation Compliance Inspection Report. These violations were attributable to V. Keeler's negligence. Specifically, LDEQ found the following areas of concern:

#### AREAS OF CONCERN

**LAC 33:III.5151.F.3.h** No demolition or renovation activity that disturbs RACM or ACDA shall be conducted at a facility regulated by this Subsection unless at least one asbestos abatement contractor/supervisor trained in accordance with Subsection P of this Section is physically present. An accredited supervisor was not initially present at the time of inspection. The "acting" supervisor was found to be unaccredited with falsified paperwork.

**LAC 33:III.5151.J.1.a.ii.** Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by Subsection O of this Section to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Boot prints were visible on the floor between the two containment areas. Children were walking the halls between the two containment areas.

**LAC 33:III.5151.F.3.a.iii.** (a). The RACM and any ACD shall be adequately wet, and contained in leak-tight, clear transparent wrapping. The wrapped flooring sections were not wet.

**LAC 33:III.5151.J.1.a.iii.** After wetting, seal all asbestos-containing waste material in leak-tight, clear, transparent containers (i.e., bags) while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight, clear, transparent wrapping, ensuring that the ACWM is securely wrapped and sealed. Only some asbestos containing waste materials were wet. The large sections were not wet or leak-tight.

**LAC 33:III.5151.J.1.a.iv.** For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated. Generator labels observed on bags of

material on 3/22/2017 were not legible. Large sections of ACM that had been removed had no generator label at all. A follow-up inspection on 3/27/2017 revealed that generator labels still were not being used on every bag and removed section as required.

31.

Neither Choice nor OPSB received a copy of the LDEQ report dated July 31, 2017 that outlined these violations at the time the report was issued. Rather, Choice and OPSB were not advised of the issues or report until late June 2018—almost a year after the date of LDEQ's report. On the other hand, RSD and Jacobs were well aware of the report and findings at the time it was issued.

32.

Abatement work had to stop while Tuna, V. Keeler, and N-Y addressed the violations. V. Keeler was allowed to continue its work on evenings and weekends. Ultimately, V. Keeler completed the asbestos-removal from these third floor classrooms. LDEQ eventually certified that the problems were fixed and that there was no safety risk to students.

33.

When the LDEQ report was released to Choice and the public over a year later, however, many Lafayette Academy parents were concerned with the LDEQ's findings. Thereafter, Choice and OPSB received negative media attention and some students decided they would not return to Lafayette Academy.

34.

The failure of Jacobs, N-Y, Tuna, and Keeler to properly oversee, manage, coordinate, and/or complete the project in a safe and compliant manner led to Choice's and OPSB's damages.

35.

During the 2017-2018 school year, RSD contracted with a different contractor, Law, to perform the Phase 2 Work of various additional improvements at the Carrollton Campus, which included asbestos removal and replacement of the concrete floor fill system on the first and second floors. Law contracted with AEC. Jacobs again served as the construction manager of the project on behalf of RSD pursuant to a contract, and N-Y again served as the architect for the Phase 2 project.

36.

In late May 2018, Law and AEC were approved to proceed with removing the asbestos-containing tile on the first and second floors of the Carrollton Campus, and this Phase 2 work began after the 2017-2018 school year ended.

37.

Jacobs and N-Y Associates were responsible for overseeing the work and ensuring it was being properly done, and Law and AEC were likewise responsible for conducting the Phase 2 Work properly.

38.

On June 6, 2018, Jacobs and N-Y discovered substantial asbestos contamination due to Law and AEC's mistakes and notified RSD. Thereafter, Jacobs and/or RSD notified LDEQ.

39.

On June 14, 2018, LDEQ inspected the Carrollton Campus and found the following violations:

#### **Violations**

**LAC 33:III.5151.J.1. Discharge no visible emissions to the outside air during collection, processing (including incineration), packaging, or transporting or deposition of any asbestos containing waste material generated by the source, and use one of the emission control and waste treatment methods specified in Subparagraphs J.1.a-d of this section. Dust/visible emissions were observed as Law/AEC asbestos workers dumped ACWM down a chute and into the roll-off box.**



LAC 33:III.5151.F.3.C.iii. For all RACM, including material that has been removed or stripped: iii. transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections. The chute used by the Law/AEC asbestos workers was not leak tight as there was an open space between the chute and the roll-off box, dust was observed coming from the open end of the chute, and RACM was observed on the ground outside of the roll-off box. LAC 33:III.5151.B Definitions. *Leak Tight* -- solids or liquids cannot escape or spill out. It also means dust-tight.

LAC 33:III.5151.J.1.a. Adequately wet and store asbestos-containing waste material as follows: The broken and crushed asbestos concrete material (ACWM) that had been dumped into the roll-off box by Law/AEC asbestos workers was not adequately wet as evidenced by visible emissions coming from the ACWM as it was dumped into the box.

LAC 33:III.5151.J.1.a.iii. After wetting, seal all asbestos-containing waste material in leak-tight, clear, transparent containers (in bags) while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight, clear, transparent wrapping, ensuring that the ACWM is securely wrapped and sealed. Law/AEC asbestos workers did not bag broken and crushed asbestos concrete ACWM prior to removal from the negative pressure enclosure. The ACWM dumped in the roll-off box by AEC asbestos workers was not in a leak-tight wrapping.

LAC 33:5151.F.3.f.i. For all RACM, including material that has been removed or stripped: i. adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with Subsection J of this section. Law/AEC failed to ensure that RACM, the broken and crushed asbestos concrete material on the second floor, remained wet until collected and contained.

LAC 33:III.5151.J.1.a.iv. label the containers or wrapped materials specified in this Subsection using warning labels specified by the Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) asbestos construction standard, 29 CFR 1926.1101(k)(8)(i)-(vi). The labels shall be

printed in letters of sufficient size and contrast so as to be readily visible and legible; Law/AEC failed to use asbestos warning labels on the roll-off box which contained ACWM.

LAC 33:III.5151.F.3.c. Work area controls shall be employed to prevent the release of ACM to the outside air. Work area controls, as defined by LAC 33:III.5151.B, are work practices and engineering procedures that shall be used when removing RACM, as outlined in OSHA 29 CFR 1926.1101(g).

29 CFR 1926.1101(g)(1)(ii)

(i) Engineering controls and work practices for all operations covered by this section. The employer shall use the following engineering controls and work practices in all operations covered by this section, regardless of the levels of exposure:

(ii) Wet methods, or wetting agents, to control employee exposures during asbestos handling, mixing, removal, cutting, application, and cleanup, except where employers demonstrate that the use of wet methods is infeasible due to for example, the creation of electrical hazards, equipment malfunction, and, in roofing, except as provided in paragraph (g)(8)(ii) of this section; and .... Law/AEC did not use wet methods during the removal of floor tile, that was assumed to be Vinyl Asbestos Tile (VAT), on the first floor.

29 CFR 1926.1101(g)(1)(iii) Prompt clean-up and disposal of wastes and debris contaminated with asbestos in leak-tight containers except in roofing operations, where the procedures specified in paragraph (g)(8)(ii) of this section apply. Law/AEC did not place the ACWM, resulting from the removal of the asbestos concrete material, in leak-tight containers prior to removal from the enclosure. Law/AEC failed to promptly clean up ACWM scattered on surfaces outside of the negative pressure enclosure, both inside and outside of the school building.

29 CFR 1926.1101(g)(2)(v) Wherever the feasible engineering and work practice controls described above are not sufficient to reduce employee exposure to or below the permissible exposure limit and/or excursion limit prescribed in paragraph (c) of this section, the employer shall use them to reduce employee exposure to the lowest levels attainable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (h) of this section.

**29 CFR 1926.1101(h)(1)(ii)**

**(h) Respiratory protection —**

(i) **General.** For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(ii) **Class II asbestos work** when ACM is not being removed in a substantially intact state. Law/AEC asbestos workers were observed not wearing respirators while inside the enclosure used for Class II work.

LAC 33:III.5151.F.2.d.vi. estimate of the approximate amount of RACM to be removed from the facility in terms of length of pipe in linear feet, surface area in square feet on other facility components, or volume in cubic feet if off the facility components. Also, estimate the approximate amount of category I and category II nonfriable ACM in the affected part of the facility that will not be removed before the demolition. In the case of asbestos-contaminated debris pile(s), estimate the approximate total volume of the debris to be disposed. Total volume of all RACM and ACD shall be documented in cubic yards; The Form AAC-2(a) submitted and signed by Glenn Johnson, did not report the total volume of all RACM and ACD. The bid and contract specified the removal of at least 398 cubic yards of RACM. Law/AEC reported only 45 cubic yards of RACM. The bid and contract specified the removal of a minimum of 104 cubic yards of ACD from the demolition of the Wood Sleepers and Wood Strip Flooring on the second floor. Law/AEC did not report any ACD would be removed.

**LAC 33:III.5151.F.2.f.ii**

f. use the following procedures in order that the department can trace disposal of ACWM:

ii. the owner or operator of a demolition, renovation, response action, or ACDA shall complete and sign their portion of the valid ADVF, including the quantity shipped in cubic yards, the date the project is scheduled to be completed (or has been completed as applicable), printed name, signed and dated certification, and relinquish the valid ADVF to the waste transporter prior to the off-site shipment; Law/AEC failed to provide a valid ADVF to the waste transporter prior to off-site shipment of a roll-off box containing ACWM.

**LAC 33:III.5151.J.2.a.**

2. All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at: a. a waste disposal site operated in accordance with the provisions of Subsection N of this Section; Law/AEC left asbestos-containing waste material, RACM, at the school in a roll-off box for more than two months, from June 15, 2018 until August, 22 – 24, 2018. The roll-off box was removed from the school yard but, as of November 30, 2018, the ACWM has not been disposed of at the disposal facility, River Birch Landfill, specified in the AAC-2(a) Form submitted by AEC.

40.

Thereafter, RSD issued a stop work order and terminated Law's contract.

41.

Thus, due to the failure of Defendants to properly perform their duties at the Carrollton Campus, all Phase 2 work had to stop.

42.

The improper and incomplete work resulted in the contamination of the Carrollton Campus's first, second, and third floors. The contamination and unfinished renovations forced Lafayette Academy out of its historical campus on Carrollton Avenue. The campus still requires remediation before it is suitable for use as a school.

43.

The problems related to asbestos-removal work prompted a series of conversations among Choice, OPSB, and others regarding the problems and ramifications they could have on the school year.

44.

By letter dated July 13, 2018, the RSD provided the below information and notified Choice that it would be required to relocate Lafayette Academy students to a separate facility for Fall 2018:

During summer of 2018, first and second floor renovation and abatement work commenced. This work did not start until after school dismissed in May of 2018, and no schoolchildren were on the premises at any time during the renovation period. Due to the contractor's deviation from the design and hazardous materials abatement/containment specifications, as observed by RSD representatives, the Architect of Record issued a stop-work Order to the Contractor on June 15, 2018. The RSD instructed LDEQ be advised of the situation, and engaged that Department in the discussion of corrective action. The exterior site was cleaned shortly thereafter, and LDEQ inspectors were kept apprised of, and reviewed the scope and performance of this work. Exterior cleanup is complete, and all required clearance testing of the exterior was performed. Due to the contractor's breaches referenced above, the RSD issued a Notice of Contractor Default and Intent to Terminate the Construction Contract on July 6, 2018. The contractor's actions have made timely completion of the remainder of this refurbishment/abatement project impossible, and it must continue into the Fall months. For this reason, and only this reason, the school must relocate for the Fall 2018 session.

45.

Choice learned that Lafayette's first, second, and third floors contain unsafe asbestos levels and would require remediation. Because Law was terminated, the scope of work had to be rebid, causing further delay.

46.

As a result, Choice was forced to relocate Lafayette Academy for the 2018-2019 *and* 2019-2020 school years.

47.

OPSB identified an alternate location on Kerlerec Street and extensive renovation work with contractors working around the clock had to be performed to ensure school started on August

27, 2018, which was nearly 20 days after school would have started at the Carrollton Campus had there been no negligence by the Defendants.

48.

Although Choice and OPSB worked tirelessly to prepare the Kerlerec Campus for 2018-2019 school year, it came at great financial and human cost.

49.

In addition, the Kerlerec Campus was not what many students and parents expected when enrolling their children at Lafayette Academy and the location was not as convenient, which may have affected enrollment, which cannot be calculated at this point.

50.

Also, now that the Carrollton Campus cannot be used for the 2019-2020 school year and Lafayette must remain at the Kerlerec campus, OPSB must update other sites for projects that were originally set to be at the Kerlerec campus, which has caused OPSB to expend additional monetary resources and sustain additional damages as a result of Defendants' negligence.

#### **CLAIMS AGAINST DEFENDANTS**

51.

Choice and OPSB repeat and re-aver the allegations set forth in paragraphs 1 – 50 as if copied herein.

52.

Due to the negligence of the Defendants, the work had to cease, and the Carrollton Campus's first and second floors contain unsafe asbestos levels and will require remediation.

53.

Jacobs owed a duty to Choice and OPSB to oversee and administer the Phase 1 and Phase 2 projects according to the standard of care of similar professionals in the industry, which included timely, safely, and correctly completing the project for which it was responsible, which Jacobs did not do.

54.

Jacobs was negligent, causing damage to Choice and OPSB by, including, but not limited to, failing to follow generally accepted construction management practices in overseeing the project at the Carrollton Campus, failing to properly oversee the design and construction work,

failing to competently act as RSD's representative on the project, causing and/or contributing to delays, failing to adhere to standards for a reasonably prudent manager in the Orleans Parish area.

55.

Tuna owed a duty to Choice and OPSB to perform its role as the general contractor for the Phase 1 Work according to the standard of care of similar professionals in the industry, which Tuna did not do.

56.

Tuna was negligent, causing damage to Choice and OPSB by, including, but not limited to, failing to follow generally accepted construction practices and by negligently performing renovations/work, by failing to properly oversee and undertake the construction of its work, by causing and/or contributing to delays, and by failing to adhere to standards for a reasonably prudent contractor in the Orleans Parish area.

57.

V. Keeler owed a duty to Choice and OPSB to perform its role as the asbestos removal contractor for the Phase 2 Work according to the standard of care of similar professionals in the industry, which V. Keeler did not do.

58.

V. Keeler was negligent, causing damage to Choice and OPSB by, including, but not limited to, failing to follow generally accepted construction practices and by negligently performing renovations/work, by failing to properly oversee and undertake the construction of its work, by causing and/or contributing to delays, and by failing to adhere to standards for a reasonably prudent contractor in the Orleans Parish area.

59.

Law owed a duty to Choice and OPSB to perform its role as the general contractor for the Phase 1 Work according to the standard of care of similar professionals in the industry, which Law did not do.

60.

Law was negligent, causing damage to Choice and OPSB by, including, but not limited to, failing to follow generally accepted construction practices and by negligently performing renovations/work, by failing to properly oversee and undertake the construction of its work, by

causing and/or contributing to delays, and by failing to adhere to standards for a reasonably prudent contractor in the Orleans Parish area.

61.

AEC owed a duty to Choice and OPSB to perform its role as the asbestos removal contractor for the Phase 2 Work according to the standard of care of similar professionals in the industry, which AEC did not do.

62.

AEC was negligent, causing damage to Choice and OPSB by, including, but not limited to, failing to follow generally accepted construction practices and by negligently performing renovations/work, by failing to properly oversee and undertake the construction of its work, by causing and/or contributing to delays, and by failing to adhere to standards for a reasonably prudent contractor in the Orleans Parish area.

63.

N-Y owed a duty to Choice and OPSB to perform its role as the architect for the Phase 1 and Phase 2 Work according to the standard of care of similar professionals in the industry, which N-Y did not do.

64.

N-Y Associates was negligent, causing damage to Choice and OPSB by, including, but not limited to, failing to follow generally accepted architecture and/or engineering practices at the Carrollton Campus, failing to properly oversee the design and construction work, failing to competently act as representatives on the project, causing and/or contributing to delays, failing to adhere to standards for a reasonably prudent architect and/or engineer in the Orleans Parish area.

65.

Defendants are jointly liable to Choice and OPSB for their damages pursuant to Louisiana Civil Code article 2324.

**CLAIMS AGAINST INSURERS**  
**UNDER LOUISIANA DIRECT ACTION STATUTE**

66.

Choice and OPSB repeat and re-aver the allegations set forth in paragraphs 1 – 65 as if copied herein.

67.

Colony, Travelers Indemnity and Travelers Property, ABC, DEF, GHI, JKL, MNO, and PQR insurance companies (collectively, the “Insurers”) are insurance companies who were at pertinent times the commercial general liability and/or excess and/or professional liability insurance carriers for defendants in this lawsuit.

68.

Pursuant to Louisiana Revised Statutes § 22:655 the Insurers are solidarily liable with its respective insureds to Choice Foundation and OPSB to the limits of the policies for their insured’s acts and/or omissions that caused damage to Choice Foundation and OPSB.

#### **CHOICE’S DAMAGES**

69.

Choice and OPSB repeat and re-aver the allegations set forth in paragraphs 1 – 68 as if copied herein.

70.

Due to the failure of Defendants to complete the scheduled renovation projects in a safe and timely manner at the Carrollton Campus, Choice has incurred and is continuing to incur damages.

71.

Choice stored furniture and equipment of significant value including, but not limited to, Choice’s computer servers on the floors which were contaminated and must be replaced. Moreover, the play yard and additional items, including those in the large metal storage units in which Choice stored items from the first floor, were contaminated. Thus far, Choice authorized an expenditure of at least \$1.3 million to replace contaminated furniture and equipment.

72.

In addition to loss of furniture, equipment, and other items, the Carrollton Campus could not be used for the 2018-2019 school year. Moreover, the Carrollton Campus cannot be used for the 2019-2020 school year either, which has caused further damages.

73.

Choice was required to relocate Lafayette Academy for the 2018-2019 school year (and for the 2019-2020 school year) at great cost and inconvenience to Choice and disruption to the Lafayette faculty, students, and families.

74.

Many parents have expressed their frustration to Choice and the media regarding the relocation and how the situation was handled, which in turn has harmed Choice.

75.

Choice has incurred additional damages, including, but not limited to, damages caused by the disruption of operations and relocation of operations to another campus. Thus, Choice has a claim for extra expenses.

76.

Choice's claims for lost profits will not fully be known until the loss of students can be calculated for the 2018-2019 school year or even until next year when Choice determines how many students it lost due to the relocation. The loss of a student in one year subsequently affects the lost profits for the remaining years that student would have attended Lafayette Academy but for the actions of the Defendants.

77.

In addition, Choice has lost faculty that affects the operations of the school.

78.

Choice has incurred damages through no fault of its own, and it has incurred expenses in preparing for the new school year, which has been delayed due to the Defendants' actions, at a replacement facility.

79.

Accordingly, Choice seeks all damages resulting from the Defendants' actions, including, but not limited to, (1) the amounts paid to replace furniture, equipment, classroom materials, and other items that were contaminated and to be replaced; (2) extra expenses it incurred to relocated the Carrollton Campus to the Kerlerec Campus; and (3) lost profits to be calculated.



### **OPSB'S DAMAGES**

80.

Choice and OPSB repeats and re-avers the allegations set forth in paragraphs 1 – 79 as if copied herein.

81.

Due to the failure of Defendants to complete a scheduled renovation project in a safe and timely manner at the Carrollton Campus, OPSB has also incurred and is continuing to incur damages.

82.

To date, OPSB has been forced to spend approximately \$5,000,000.00 dollars to relocate schools and programming as a result of Defendants' negligence, which rendered the Carrollton Campus unusable when OPSB needed that location for school operations. Because Lafayette Academy will remain on the Kerlerec Campus until 2020, OPSB must perform renovations at another facility to accommodate programming that was slated to be in the Kerlerec Campus next year.

83.

Accordingly, OPSB seeks all damages resulting from the Defendants' actions, including, but not limited to, (1) any and all costs associated with relocating Choice to the Kerlerec facility and (2) any and all costs associated with relocating other programming that was slated to occupy the Kerlerec facility during the 2019-2020 school year.

### **REQUEST FOR JURY**

Choice and OPSB request a trial by jury.

### **PRAYER FOR RELIEF**

WHEREFORE, Choice and OPSB respectfully pray that this Petition for Damages be deemed good and sufficient and that, after due proceedings are conducted, judgment be rendered in their favor and against Defendants, Tuna, V. Keeler, Law, AEC, N-Y, Jacobs, Colony Insurance Company, Travelers Indemnity Company, Travelers Property Casualty Company of America, ABC Insurance Company, DEF Insurance Company, GHI Insurance Company, JKL Insurance Company, MNO Insurance Company and PQR Insurance Company, who are jointly liable to

Choice and OPSB, awarding all legal and equitable relief to which Choice and OPSB are entitled, including, but not limited to,

- (1) damages sustained by Choice, including, but not limited to,
- (2) damages sustained by OPSB, including, but not limited to, any and all costs associated with relocating schools and programs as a result of Defendants' negligence;
- (3) Pre-judgment and post-judgment interest on the total award rendered by this Court;
- (4) Attorneys' fees, penalties, and all other damages available under Louisiana Revised Statutes § 22:1982 and 22:1973 against the insurance company defendants.
- (5) All other general and equitable relief this Court deems proper.

Dated: May 10, 2019

Respectfully submitted,



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**V.E. Keeler & Associates, LLC**

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**Travelers Indemnity Company**

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**Travelers Property Casualty Company of America**

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